

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0146-R

Request for Reconsideration Allowed
Late Application for Review Allowed
Order No. 22-UI-207972 Reversed
Late Request for Hearing Allowed
Merits Hearing Required

PROCEDURAL HISTORY: On July 5, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was paid benefits to which she was not entitled and assessing an overpayment of \$426 in Pandemic Unemployment Assistance benefits (PUA) and \$1,800 in Federal Pandemic Unemployment Compensation benefits (FPUC) (decision # 142233). On July 25, 2022, decision # 142233 became final without claimant having filed a request for hearing. On August 15, 2022, claimant filed a late request for hearing. ALJ Kangas considered claimant's request, and on November 22, 2022 issued Order No. 22-UI-207972 dismissing claimant's request for hearing as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by December 6, 2022. On December 12, 2022, Order No. 22-UI-207972 became final without claimant having filed an appellant questionnaire response or application for review with the Employment Appeals Board (EAB). On January 3, 2023, claimant filed a late appellant questionnaire response and a late application for review with EAB. On January 23, 2023, ALJ Kangas mailed a letter stating that the Office of Administrative Hearings (OAH) would not consider claimant's questionnaire response or issue another order regarding this matter because the questionnaire response was late. On February 3, 2023, EAB issued EAB Decision 2023-EAB-0146, dismissing claimant's late application for review without prejudice, subject to their right to request reconsideration and provide additional evidence to EAB regarding the reasons for the late filing. On February 7, 2023, claimant filed a timely request for reconsideration of EAB Decision 2023-EAB-0146.

EVIDENTIARY MATTER: EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence is claimant's appellant questionnaire response, which was the written statement claimant provided with their late application for review, and has been marked as EAB Exhibit 1. The other piece of additional evidence is claimant's request for reconsideration that has been marked as EAB Exhibit 2. Copies of EAB Exhibits 1 and 2 were provided to the parties with this decision. Any party that objects to our admitting EAB Exhibits 1 and 2 must submit such objection to this office in writing, setting forth the basis of the objection in

writing, within ten days of our mailing this decision. OAR 471-041-0090(2). Unless such objection is received and sustained, the exhibits will remain in the record.

FINDINGS OF FACT: (1) On July 30, 2020, claimant filed an initial claim for Pandemic Unemployment Assistance (PUA) benefits. The Department determined claimant had a valid claim for benefits with a first effective week of the week ending February 8, 2020 (week 06-20). Claimant claimed and was paid benefits for several weeks of unemployment in the Spring of 2020. Claimant filed the weekly claim forms to receive these benefits in August 2020.¹

(2) On July 5, 2022, the Department mailed decision # 142233 to claimant's address of record on file with the Department, which was an address in Minnesota. Decision # 142233 stated, "Any appeal from this decision must be filed on or before Jul 25, 2022 to be timely." Exhibit 1 at 2.

(3) Although claimant's mailing address was in Minnesota, claimant was a traveling dental hygienist. EAB Exhibit 2 at 1. The nature of claimant's work required them to move multiple times each year, sometimes as often as every few weeks. EAB Exhibit 2 at 1. It was not feasible for claimant to use mail forwarding through the U.S. Postal Service because they moved too often for work. Claimant had an arrangement in which their parents would check and forward their mail to claimant. EAB Exhibit 2 at 1. However, this often caused a delay in claimant receiving their mail. EAB Exhibit 2 at 1.

(4) At the time OAH mailed decision # 142233 to claimant's Minnesota address, claimant lived and worked in another state. EAB Exhibit 1 at 2. Claimant received decision # 142233 forwarded from their parents on August 10, 2022. EAB Exhibit 1 at 1. On August 15, 2022, claimant filed a late request for hearing on the administrative decision.

(5) On November 22, 2022, OAH mailed Order No. 22-UI-207972 to claimant's Minnesota address. Order No. 22-UI-207972 stated, "You may appeal this decision by filing the attached form Application for Review with the Employment Appeals Board within 20 days of the date that this decision is mailed." Order No. 22-UI-207972 at 2. Order No. 22-UI-207972 also stated on its certificate of mailing, "Any party may appeal this Order by filing a Request for Review with the Employment Appeals Board no later than December 12, 2022."

(6) At the time the Department mailed Order No. 22-UI-207972 to claimant's Minnesota address, claimant lived and worked in South Carolina. On January 3, 2023, claimant received Order No. 22-UI-207972 forwarded from their parents. On January 3, 2023, claimant filed a late application for review of Order No. 22-UI-207972. Shortly thereafter, claimant moved for work again, to North Carolina.

CONCLUSIONS AND REASONS: Claimant's request for reconsideration is allowed. Claimant's late application for review of Order No. 22-UI-207972 is allowed. Claimant's late request for hearing on decision # 142233 is allowed. This matter is remanded for a hearing on the merits of decision # 142233.

¹ EAB has taken notice of these facts, which are contained in Employment Department records. OAR 471-041-0090(1) (May 13, 2019). Any party that objects to our taking notice of this information must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. OAR 471-041-0090(2). Unless such objection is received and sustained, the noticed fact will remain in the record.

Request for Reconsideration. ORS 657.290(3) authorizes the Employment Appeals Board, upon its own motion or at the request of a party, to reconsider any previous decision of the Employment Appeals Board, including “the making of a new decision to the extent necessary and appropriate for the correction of previous error of fact or law.” *See also* OAR 471-041-0145(1) (May 13, 2019). The request is subject to dismissal unless it is filed on or before the 20th day after the decision sought to be reconsidered was mailed. OAR 471-041-0145(2).

EAB dismissed claimant’s late application for review without prejudice and subject to claimant filing a timely request for reconsideration within 20 days after EAB’s dismissal decision was issued. Claimant filed a request for reconsideration consistent with the requirements set forth in OAR 471-041-0145. The request for reconsideration therefore is allowed.

Late Application for Review. An application for review is timely if it is filed within 20 days of the date that OAH mailed the order for which review is sought. ORS 657.270(6); OAR 471-041-0070(1) (May 13, 2019). The 20-day filing period may be extended a “reasonable time” upon a showing of “good cause.” ORS 657.875; OAR 471-041-0070(2). “Good cause” means that factors or circumstances beyond the applicant’s reasonable control prevented timely filing. OAR 471-041-0070(2)(a). A “reasonable time” is seven days after the circumstances that prevented the timely filing ceased to exist. OAR 471-041-0070(2)(b). A late application for review will be dismissed unless it includes a written statement describing the circumstances that prevented a timely filing. OAR 471-041-0070(3).

The application for review of Order No. 22-UI-207972 was due by December 12, 2022. Because claimant did not file their application for review until January 3, 2023, the application for review was late.

Claimant was a travel dental hygienist who moved frequently for work. They were living and working in South Carolina at the time Order No. 22-UI-207972 was mailed to claimant’s address in Minnesota. Claimant was reliant upon their parents to check and forward their mail because mail forwarding through the U.S. Postal service was not feasible for claimant to use given the frequency of their moves. It was reasonable for claimant to not provide their temporary South Carolina address to OAH for it to mail the order because, as of the date OAH mailed Order No. 22-UI-207972, claimant had not received a response to their late request for hearing more than three months after it had been filed. Further, claimant did not know with certainty where they would be living when a response was issued. Providing the South Carolina address would also have been problematic because the record on review shows that shortly after claimant filed their late application for review on January 3, 2023, claimant moved again, to North Carolina. EAB Exhibit 1 at 2. Therefore, providing the address of their temporary residence in South Carolina when a move to North Carolina was imminent was not a viable alternative to maintaining Minnesota as claimant’s address of record and relying on their parents to forward their mail.

Thus, claimant’s failure to receive Order No. 22-UI-207972 because their parents did not forward it until January 3, 2023 was a factor beyond claimant’s reasonable control. Upon claimant’s receipt of the order, the factor that prevented claimant from filing an application for review ceased to exist. Claimant filed a late application for review on January 3, 2023, which was within a seven-day “reasonable time.” Accordingly, claimant established good cause to extend the deadline to file an application for review to January 3, 2023, and the late application for review is allowed.

Late Request for Hearing. ORS 657.269 provides that the Department’s decisions become final unless a party files a request for hearing within 20 days after the date the decision is mailed. ORS 657.875 provides that the 20-day deadline may be extended a “reasonable time” upon a showing of “good cause.” OAR 471-040-0010 (February 10, 2012) provides that “good cause” includes factors beyond an applicant’s reasonable control or an excusable mistake, and defines “reasonable time” as seven days after those factors ceased to exist. Good cause does not include “[f]ailure to receive a document due to not notifying the Employment Department . . . of an updated address while the person is claimant benefits or if the person knows, or reasonably should know of a pending appeal[.]” OAR 471-040-0010(1)(b)(A).

On July 5, 2022, the Department mailed decision # 142233 to claimant at claimant’s address of record on file with the Department. The 20-day deadline for claimant to file a timely request for hearing on that decision was July 25, 2022. Claimant did not file a request for hearing on decision # 142233 until August 15, 2022. Accordingly, claimant’s request for hearing was late.

Circumstances beyond claimant’s reasonable control prevented them from filing a request for hearing by the deadline. As noted above, Claimant was a travel dental hygienist who moved frequently for work. Claimant was living and working in another state at the time the Department mailed decision # 142233 to claimant’s Minnesota address. Claimant was reliant upon their parents to check and forward their mail because mail forwarding through the U.S. Postal service was not feasible for claimant to use given the frequency of their moves. At the time the Department issued the administrative decision, claimant had not claimed benefits in almost two years, had no appeal pending, and had no reason to expect they would be receiving mail from the Department or to change their address of record with the Department to their temporary address in the other state. Given the frequency of claimant’s moves, maintaining claimant’s Minnesota address and relying on their parents to forward mail was a reasonable arrangement.

Thus, claimant’s failure to receive decision # 142233 because their parents did not forward it until August 10, 2022 was a factor beyond claimant’s reasonable control. Upon claimant’s receipt of the administrative decision, the factor that prevented claimant from filing a request for hearing ceased to exist. Claimant filed a late request for hearing on August 15, 2022, which was within a seven-day “reasonable time” of August 10, 2022. Accordingly, claimant established good cause to extend the deadline to file the request for hearing to August 15, 2022, and the late request for hearing is allowed.

On reconsideration, claimant’s late application for review and late request for hearing are allowed. This matter is remanded for a hearing on the merits of decision # 142233.

Claimant should ensure that their mail is monitored carefully so that they receive the future notice that OAH will issue scheduling the merits hearing in this matter.

DECISION: Order No. 22-UI-207972 is set aside, and this matter remanded for further proceedings consistent with this order.

D. Hettle and A. Steger-Bentz;
S. Serres, not participating.

DATE of Service: March 17, 2023

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 22-UI-207972 or return this matter to EAB. Only a timely application for review of the subsequent order will cause this matter to return to EAB.

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Understanding Your Employment Appeals Board Decision

English

Attention – This decision affects your unemployment benefits. If you do not understand this decision, contact the Employment Appeals Board immediately. If you do not agree with this decision, you may file a Petition for Judicial Review with the Oregon Court of Appeals following the instructions written at the end of the decision.

Simplified Chinese

注意 – 本判決會影響您的失業救濟金。如果您不明白本判決，請立即聯繫就業上訴委員會。如果您不同意此判決，您可以按照該判決結尾所寫的說明，向俄勒岡州上訴法院提出司法複審申請。

Traditional Chinese

注意 – 本判決會影響您的失業救濟金。如果您不明白本判決，請立即聯繫就業上訴委員會。如果您不同意此判決，您可以按照該判決結尾所寫的說明，向俄勒岡州上訴法院提出司法複審申請。

Tagalog

Paalala – Nakakaapekto ang desisyong ito sa iyong mga benepisyo sa pagkawala ng trabaho. Kung hindi mo naiintindihan ang desisyong ito, makipag-ugnayan kaagad sa Lupon ng mga Apela sa Trabaho (Employment Appeals Board). Kung hindi ka sumasang-ayon sa desisyong ito, maaari kang maghain ng isang Petisyon sa Pagsusuri ng Hukuman (Petition for Judicial Review) sa Hukuman sa Paghahabol (Court of Appeals) ng Oregon na sinusunod ang mga tagubilin na nakasulat sa dulo ng desisyon.

Vietnamese

Chú ý - Quyết định này ảnh hưởng đến trợ cấp thất nghiệp của quý vị. Nếu quý vị không hiểu quyết định này, hãy liên lạc với Ban Kháng Cáo Việc Làm ngay lập tức. Nếu quý vị không đồng ý với quyết định này, quý vị có thể nộp Đơn Xin Tái Xét Tư Pháp với Tòa Kháng Cáo Oregon theo các hướng dẫn được viết ra ở cuối quyết định này.

Spanish

Atención – Esta decisión afecta sus beneficios de desempleo. Si no entiende esta decisión, comuníquese inmediatamente con la Junta de Apelaciones de Empleo. Si no está de acuerdo con esta decisión, puede presentar una Aplicación de Revisión Judicial ante el Tribunal de Apelaciones de Oregon siguiendo las instrucciones escritas al final de la decisión.

Russian

Внимание – Данное решение влияет на ваше пособие по безработице. Если решение Вам непонятно – немедленно обратитесь в Апелляционный Комитет по Трудоустройству. Если Вы не согласны с принятым решением, вы можете подать Ходатайство о Пересмотре Судебного Решения в Апелляционный Суд штата Орегон, следуя инструкциям, описанным в конце решения.

Khmer

ចំណុចសំខាន់ – សេចក្តីសម្រេចនេះមានផលប៉ះពាល់ដល់អត្ថប្រយោជន៍គ្មានការងារធ្វើរបស់លោកអ្នក។ ប្រសិនបើលោកអ្នកមិនយល់អំពីសេចក្តីសម្រេចនេះ សូមទាក់ទងគណៈកម្មការឧទ្ធរណ៍ការងារភ្លាមៗ។ ប្រសិនបើលោកអ្នកមិនយល់ស្របចំពោះសេចក្តីសម្រេចនេះទេ លោកអ្នកអាចដាក់ពាក្យប្តឹងសុំឲ្យមានការពិនិត្យរឿងក្តីឡើងវិញជាមួយតុលាការឧទ្ធរណ៍រដ្ឋ Oregon ដោយអនុវត្តតាមសេចក្តីណែនាំដែលសរសេរនៅខាងចុងបញ្ចប់នៃសេចក្តីសម្រេចនេះ។

Laotian

ເອົາໃຈໃສ່ – ຄຳຕັດສິນນີ້ມີຜົນກະທົບຕໍ່ກັບເງິນຊ່ວຍເຫຼືອການຫວ່າງງານຂອງທ່ານ. ຖ້າທ່ານບໍ່ເຂົ້າໃຈຄຳຕັດສິນນີ້, ກະລຸນາຕິດຕໍ່ຫາຄະນະກຳມະການອຸທອນການຈ້າງງານໃນທັນທີ. ຖ້າທ່ານບໍ່ເຫັນດີນຳຄຳຕັດສິນນີ້, ທ່ານສາມາດຍື່ນຄຳຮ້ອງຂໍການທົບທວນຄຳຕັດສິນນຳສານອຸທອນລັດ Oregon ໄດ້ໂດຍປະຕິບັດຕາມຄຳແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄຳຕັດສິນນີ້.

Arabic

هذا القرار قد يؤثر على منحة البطالة الخاصة بك، إذا لم تفهم هذا القرار، إتصل بمجلس منازعات العمل فوراً، و إذا كنت لا توافق على هذا القرار، يمكنك رفع شكوى للمراجعة القانونية بمحكمة الإستئناف بأوريغون و ذلك بإتباع الإرشادات المدرجة أسفل القرار.

Farsi

توجه - این حکم بر مزایای بیکاری شما تاثیر می گذارد. اگر با این تصمیم موافق نیستید، بلافاصله با هیأت فرجام خواهی استخدام تماس بگیرید. اگر از این حکم رضایت ندارید، می‌توانید با استفاده از دستور العمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

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